

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

In re: BRIDGESTONE/FIRESTONE, INC
ATX, ATX II AND WILDERNESS TIRES
PRODUCTS LIABILITY LITIGATION

MDL No. 1373
(centralized before Hon. Sarah Evans
Barker, Chief judge)

_____/

This Document Relates to:

JOSHUA H. MILLER,

Plaintiff,

vs.

Individual Case Number 1:00-cv-009373-C-B/S

BRIDGESTONE/FIRESTONE, INC., SEARS,
ROEBUCK AND CO., and
FORD MOTOR COMPANY,

Defendants.

_____/

**FIRESTONE'S ANSWER AND AFFIRMATIVE DEFENSES
TO DEFENDANT SEARS ROEBUCK & CO.'S CROSS-CLAIM**

Defendant, BRIDGESTONE/FIRESTONE, INC. (hereinafter "Firestone"), by and through its undersigned counsel hereby files its Answer, Affirmative Defenses and Demand for Jury Trial in response to Defendant, Sears Roebuck & Co.'s Cross Claim Against Defendant Firestone, (the "Cross-claim") and states:

1. With respect to the allegations set forth in Sears' Cross-claim, Defendant, Firestone, admits the allegations of numerical paragraph one.

2. With respect to the allegations of numerical paragraph two, Firestone admits the jurisdictional allegations of Sears' state of incorporation. It further admits that Sears is licensed to and is doing business in the state of Florida, but states that Sears business in the State of Florida is irrelevant to the present cross-claim.

3. With respect to the allegations of numerical paragraph three, Firestone admits that it is a foreign corporation licensed to and doing business in the State of Florida. Firestone further admits it is engaged in the business of selling tires. Firestone denies, however, that any business it conducted, including in Florida, bears a relationship to Plaintiffs' allegations in this matter, or to the cross-claim filed herein.

4. With respect to the allegations of numerical paragraph four, Firestone denies that this action was removed to Federal Court. The action was initially filed in federal court, and was transferred, pursuant to Conditional Transfer Order No. 1..

5. With respect to the allegations of numerical paragraph five, Firestone admits plaintiff has filed a complaint, to which Firestone has previously filed an answer. Firestone further admits that the plaintiff's complaint alleges that Sears installed the subject tire. To the extent that any of the allegations contained in the plaintiff's petition have been adopted by defendant Sears by way of this paragraph, those allegations are denied.

6. With respect to the allegations of numerical paragraph six, Firestone admits plaintiff has filed a complaint, to which Firestone has previously filed an answer. Firestone further admits that the plaintiff's complaint alleges that Sears installed the subject tire and that plaintiff's complaint makes allegations of negligence, strict liability, failure to warn, breach of warranty and gross negligence.

7. With respect to the allegations of numerical paragraph seven, Firestone admits that on or about June 10, 1997 Sears and Firestone executed a letter of agreement regarding Sears' purchase of certain tires from Firestone. The remaining allegations of the paragraph are denied. Firestone specifically states that the agreement referred to in Sears' cross-claim does not cover the subject tire, as it was entered into after the sale of the subject tire, and Sears did not sell the subject tire.

8. The allegations of numerical paragraph eight are denied.

9. The allegations of numerical paragraph eight are denied.

10. The allegations of numerical paragraph eight are denied.

11. Firestone further adopts and incorporates each and every allegation and affirmative defense asserted in its response to plaintiff's complaint, and specifically denies that any acts or omissions by Firestone or its employees proximately caused Plaintiffs' alleged motor vehicle accident and/or tire failure, or that Sears purchased the subject tire from Firestone, and demands strict proof thereof. Firestone further denies that it designed, manufactured, assembled, distributed, marketed and sold the tire which is the subject of this case and demands strict proof thereof. Firestone denies each and every other material allegation contained in Sears' Cross-claim and demands strict proof thereof.

AFFIRMATIVE DEFENSES

1. Firestone adopts all allegations and affirmative defenses asserted in response to plaintiff's complaint.

2. Firestone denies that it sold the subject tire to Sears.

3. Firestone denies that Sears sold the subject tire to plaintiff.

4. If the subject tire was sold by Sears to plaintiff, Sears, through its agents and/or employees, did so negligently and carelessly conduct itself so as to have been the sole proximate cause of Plaintiffs' alleged motor vehicle accident and/or tire failure and therefore, Sears is totally barred from recovery on its Cross-Claim.

5. Firestone states that Sears, through its agents and/or employees, did so negligently and carelessly conduct itself so as to have been a proximate contributing cause of Plaintiffs' alleged motor vehicle accident and/or tire failure and therefore, Sears is barred from recovery on its Cross-Claim.

6. Firestone states that agents and/or employees of Sears proximately caused Plaintiffs' alleged motor vehicle accident and/or tire failure by negligently performing inspection, service and/or maintenance on the subject vehicle and/or tire(s), or negligently failing to perform inspection, service and/or maintenance on the subject vehicle and/or tire(s), and/or causing substantial changes to the subject tire and therefore, Sears is totally barred from recovery herein.

7. Firestone states that Sears' Cross-claim fails to state a viable, recognized cause of action under the applicable substantive law and should therefore be dismissed.

8. Firestone states that agents and/or employees of Sears and/or others are guilty of causing substantial and/or material changes to and in the subject tire, so that at the time of the subject accident, the subject tire alleged to have failed was not in the same or substantially same condition as it was when it left the control of Firestone, if ever, and this (these) subsequent change(s) and/or abuse(s) created the condition which is alleged to have caused the tire's failure and therefore, Sears is totally barred from recovery herein.

9. Firestone states that any product involved in the subject occurrence, which Plaintiffs allege was manufactured or designed by Firestone, was not defective in either design, manufacture or labeling, and Firestone was not negligent in the design, manufacture or labeling of the tire, and if such product contributed in any way to the subject accident and/or Plaintiffs' injuries or damages, such contribution to the accident was a direct and proximate result of the misuse or abuse of the product by Sears, or by others, over whom Firestone has/had no dominion and/or control, thus barring Sears from recovery herein against Firestone.

10. Firestone states that it performed all of its duties under the Letter Agreement between Sears and Firestone (without admitting that Firestone entered into such agreement or that such agreement is applicable to the subject tire) in a competent, timely and professional manner and that any alleged failure in its performance (although none is admitted) was the proximate result of errors, omissions, negligent acts, conduct or misconduct of Sears or third parties not within the control of Firestone.

11. Firestone states that Sears is not entitled to indemnity from Firestone because Plaintiffs' claims against Sears did not arise out of any misconduct or negligent act, error, or omission of Firestone, its agents, servants or employees in the performance of services under the Letter Agreement between Sears and Firestone (without admitting that Firestone entered into such agreement or that such agreement is applicable to the subject tire).

12. Firestone states that any breach of the Sears Letter Agreement between Sears and Firestone (without admitting that Firestone entered into such agreement or that such agreement is applicable to the subject tire) was due to the acts and omissions of Sears, its agents, or of third parties not under the control of Firestone.

13. Firestone states that any breach of the Sears Letter Agreement between Sears and Firestone (without admitting that Firestone entered into such agreement or that such agreement is applicable to the subject tire] was due to the acts and omissions of Sears, its agents, or of third parties not under the control of Firestone, and any damages awarded must be reduced proportionately.

14. Firestone states that it performed all of its obligations under the Sears Letter Agreement between Sears and Firestone (without admitting that Firestone entered into such agreement or that such agreement is applicable to the subject tire].

15. Firestone states that Sears is not entitled to relief from Firestone for Sears' own acts of negligence.

16. Sears' Cross-Claim against Firestone fails to adequately allege, and Sears is unable to prove, a factual basis for a finding there was no active negligence on the part of Sears, so as to enable Sears' to be entitled to relief under its cause of action.

17. Firestone states that if judgment is ultimately entered against it in the Cross-Claim, Cross-Plaintiff, Sears, should not be entitled to attorney's fees and/or costs incurred in defending itself against Plaintiff's cause(s) of action against Sears for direct (and not derivative) negligent acts and/or omissions.

RESERVATION OF RIGHT TO SUPPLEMENT DEFENSES

Firestone reserves the right to supplement this Answer with additional defenses which are learned in the course of discovery.

WHEREFORE, Defendant, Firestone, respectfully requests that a judgment be entered in its favor and that it be awarded the costs of litigating this matter, as well as any other relief this Court deems appropriate and just.

DEMAND FOR JURY TRIAL

Firestone demands trial by jury of all issues triable as a matter of right.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing was hand delivered and sent by facsimile to each of the attorneys appearing on the Court's Panel Attorney Service List and "others."

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